



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2004

Ms. Carol Longoria
Public Information Coordinator
The University of Texas System
201 West 7th Street
Austin, Texas 78701-2902

OR2004-8688

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 210755.

The University of Texas at Tyler (the "university") received a request for (1) a copy of an employment contract between the university and a named individual, (2) records pertaining to the named individual's employment and job performance, (3) audits pertaining to tennis program funds, and (4) petitions pertaining to the tennis coaching staff that were submitted by students. You state that most of the requested information will be released. You also indicate that the requested audits do not exist. We note that the Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received.¹ You claim that the submitted documents are not subject to the Act. We have considered your arguments and reviewed the submitted information.

The Act applies to "public information," which is defined under section 552.002 as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

¹*Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002; *see also* Gov't Code § 552.021. You state that the submitted documents are the personal notes of a university official that were created in preparation for two meetings regarding personnel matters. You inform us that one of the meetings never took place and that the other meeting ended without the official using the prepared notes. You also state that the official keeps the submitted documents in his personal possession and that the documents "were never incorporated as part of the [named individual's] personnel file or any other University file." Thus, we understand you to assert that the submitted documents are not "public information" because they were not used in the transaction of official business and are not maintained by the university.

Upon review of your arguments and the submitted information, however, we find that the documents at issue were created and are maintained by a university employee acting in his official capacity as an employee of the university. Further, we determine that although the submitted documents were not actually used in connection with the meetings for which they were prepared, they do consist of information that was "collected, assembled, or maintained . . . in connection with the transaction of official business." *See* Gov't Code § 552.002(a); *see also* Open Records Decision Nos. 626 (1994) (handwritten notes taken during oral interview by Department of Public Safety promotion board members are public information), 327 (1982) (notes made by school principal and athletic director relating to teacher were made in their capacities as supervisors). Therefore, the submitted documents are public information subject to release under the Act unless otherwise excepted from disclosure. *See* Gov't Code §§ 552.002,.021,.221,.301. As the university claims no exceptions to the disclosure of these documents, they must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 210755

Enc. Submitted documents

c: Ms. Kathy S. Sylvester
The Patriot, Sports Editor
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(w/o enclosures)